UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,640	03/01/2004	Nelson J. Ferragut II	P05522US02	3086

27139 7590 09/17/2004

MCKEE, VOORHEES & SEASE, P.L.C.
ATTN: MAYTAG
801 GRAND AVENUE, SUITE 3200
DES MOINES, IA 50309-2721

EXAMINER	
NORMAN, MARC E	

ART UNIT	PAPER NUMBER
3744	

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/791,640	FERRAGUT ET AL.	
	Examiner	Art Unit	
	Marc E. Norman	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *3/1/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Applicant has resubmitted the original claims of parent case 10/195,787 (now U.S. Patent 6,711,908). Since the rejections as set forth in the original Office Action of that case were not overcome, those rejections are carried forward and maintained, and, for purposes of convenience, set forth again below. Applicant is further referred to the prosecution history of that case and, in particular, the arguments set forth in the final rejection of 5 December 2003. Further, since claims 4, 7, and 17 recite the exact subject matter of claims 1, 7, and 12 of the parent patent, these claims are now rejected under rules of statutory double patenting.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 5, 6, and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karnowski in view of Malmsten.

As per claim 1, Karnowski discloses a method of monitoring a power outage in a household appliance (column 1, lines 5-11) comprising determining and calculating the duration of a power outage to the appliance (column 3, line 66). Karnowski does not specifically teach alerting a user as to the duration of the outage. Malmsten discloses a method of monitoring power outages comprising determining an occurrence of an outage (by counter 18); computing the duration of the outage (by timer 16); and alerting the user of the duration of the outage (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the power outage duration display of Malmsten to the system of Karnowski for the simple purpose of apprising the user of the details of the outage (see Malmsten, column 1, lines 12-61).

As per claims 3 and 6, Karnowski teaches storing a time prior to power outage and computing the outage time by using the time prior to the power outage (column 3, line 44 – column 4, line 39).

As per claim 5, Malmsten teaches displaying the duration (by timer 16). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine this feature to the system of Karnowski for the reasons already discussed for claim 1.

As per claim 8, Karnowski teaches maintaining a current time during the outage (based on the backup system for the electronic time of day clock (column 4, lines 4-17).

As per claim 9, Karnowski discloses storing a time prior to a power outage; maintaining a current time during the power outage; and determining a duration of the outage as already

discussed above. Again, Karnowski does not specifically teach alerting a user as to the duration of the outage. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine this feature to the system of Karnowski for the reasons already discussed for claim 1.

As per claim 10, in the case of a second outage, the system of Karnowski would simply repeat the steps performed in the first outage. Karnowski is clearly designed to function during multiple power outages.

As per claim 11, Karnowski does not teach cumulating the outage durations and alerting the user as to the total outage duration. Malmsten teaches cumulating the outage durations and alerting the user as to the total outage duration (Abstract, lines 8-10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine this feature to the system of Karnowski for the reasons already discussed for claim 1.

Claims 2, 12-16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karnowski and Malmsten and further in view of Jindrick et al.

As per claims 2 and 12, Karnowski and Malmsten do not specifically teach the household appliance being a refrigerator. Jindrick et al. teaches a method of determining a power outage to an appliance including computing the duration of the outage (Abstract, line 8); and generating a signal regarding the duration of the power outage (Abstract, lines 6-8); wherein the appliance is a refrigerator (column 2, line 52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine this feature of Jindrick et al. to the system of Karnowski for the purpose of keeping track of power outages in a refrigerator since a refrigerator is simply one potential application of the Karnowski system, and further since the relationship

between the systems of Karnowski and Jindrick et al. are discussed in the Karnowski reference (column 2, lines 18-44).

As per claims 13-15 and 18, the combination of Karnowski and Malmsten teaches all features of these claims as already discussed above, except the system being applied to a refrigerating appliance. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teachings of Karnowski and Malmsten to a refrigerating appliance, in view of Jindrick et al., for the reasons already discussed regarding claims 2 and 12.

As per claim 16, Karnowski does not specifically state that microprocessor 4 has a nonvolatile memory. Official notice is taken that nonvolatile memories are common and well known features of microprocessor systems. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine this well known feature to the microprocessor of Karnowski for the purpose of efficiently storing the power outage data.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 4, 7, and 17 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 7, and 12 of prior U.S. Patent No. 6,711,908. This is a double patenting rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 703-305-2711. The examiner can normally be reached on Mon.-Fri., 8:00-5:30, with first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on 703-308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MN

MARC NORMAN
PRIMARY EXAMINER